

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**

**APR 14 2006**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ISMAEL HINOJOSA-BENUMEA,

Defendant - Appellant.

No. 05-50222

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

D.C. No. CR-04-00125-JTM

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Southern District of California  
Jeffrey T. Miller, District Judge, Presiding

Submitted April 5, 2006<sup>\*\*</sup>

Before: HAWKINS, McKEOWN and PAEZ, Circuit Judges.

Ismael Hinojosa-Benumea appeals from the 60-month sentence imposed following his jury conviction for being a deported alien found in the United States,

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

in violation of 8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Hinojosa-Benumea contends that the district court erred in imposing an enhancement for a prior aggravated felony pursuant to U.S.S.G. § 2L1.2. Specifically, Hinojosa-Benumea contends that his 1986 conviction for burglary does not qualify as an aggravated felony. We conclude that the documentation of the 1986 burglary conviction establishes that it did satisfy all the elements of generic burglary as set forth in *United States v. Williams*, 47 F.3d 993, 995 (9th Cir. 1995), and that the district court properly determined that this conviction constitutes an aggravated felony for purposes of 8 U.S.C. § 1326(b).

We reject Hinojosa-Benumea's contention that the enhancement of his sentence was unconstitutional because the prior conviction was not alleged in the indictment, he did not admit the prior conviction, and the prior conviction was not proven to a jury beyond a reasonable doubt. *See United States v. Velasquez-Reyes*, 427 F.3d 1227, 1229 (9th Cir. 2005).

**AFFIRMED.**